

## LAW AND THE ART WORLD

## Responses to readers' questions and comments

By Bill Frazier ©2014

In my last article in *Art of the West*, I talked about the sales and hype practices of some galleries and artists in representing their work as "investment quality." I have heard from some gallery owners taking exception to my comments. With respect for the right of everyone to have his own opinions, I stand by what I said in the article.

If a sales outlet, whether gallery, studio, show or auction, represents a work of art as investment quality, and it proves otherwise, there will be an unhappy customer to whom no further sales will likely be made. Depending upon what was actually represented to the buyer, there may also be legal liabilities or, at the least, unpleasant entanglements; thus my comments and admonitions in the last article.

I am a long-time advocate of truth in advertising and consumer protection, and attempt to inform readers of relevant laws and business practices in the art world to avoid. By so doing, it is not my intent to make accusations or diminish anyone's business. If your business practices are questionable, look to yourselves and not to me.

This comment relates to previous articles about the Indian Arts and Crafts Act and the consumer protection it is designed to promote. If an art business is not willing to conform to the regulations and laws governing the sale of such work, do not complain when you get called out. This particular law has been around for almost 25 years, is not complicated, and attempts to control misrepresentation in the sale of fake Indian arts and crafts.

**Resale royalties: A bad idea**

I have just read that a congressman, I think from one of the New England states, is introducing federal legislation to require resale royalties in the secondary market sale of artwork. Why not just kill off the art market entirely?!

While there may be some, I have not ever heard from anyone who has found the resale royalty concept to be beneficial to most artists. This will simply create another level of state and/or federal bureaucracy to interfere with the sale of artwork and surely the art business in general.

Think of the rules and regulations, the forms, appraisals, record keeping and reporting. Just thinking about the accounting and legal ramifications of this gives me a headache.

Such a royalty would be a potential encumbrance against each piece of artwork. It would be comparable to a legislatively induced cloud on title of real property. It would be unmarketable without the seller or buyer making this royalty payment.

One regulation I recall required a royalty payment to both the artist and original sales gallery every time the piece was sold or transferred, including transfers as gifts or inheritances. Each such transfer required an appraisal to determine whether the value had risen since the last sale or transfer, and the owner/seller had to pay for this appraisal.

One contract I reviewed, based on such regulations, required not only the original buyer, but all future transferees to be bound. If a potential buyer refused, then the sale could not take place, so rhetorically, how much would such a piece of artwork be worth then? This is what I mean by the term "encumbrance."

Another sales contract I saw, again based on a resale royalty regulation, prohibited the owner of the artwork from lending it to someone else for exhibition, or for any other purpose, without the artist's permission and payment of a fee to the artist. I, as a buyer of artwork, would not buy any piece of work with any of these restrictions on ownership. Not to be antagonistic, but what happens when it sells for less?

Who is going to police these regulations? What will be the penalties for violation, and will they be civil or criminal? Let's just not go there.

**The IRS does not use email**

Problems involving identity theft, phishing, fraudulent telephone and email solicitations and a variety of scams are worse than ever and seem to be growing like a fungus. Some of these will be exacerbated during the tax season. Do not give information to anyone claiming by email or telephone to be from the IRS. They already have all the information they need. The IRS only uses the U.S. mail



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and will never send you an email.

Consider looking at the IRS website, [www.irs.gov](http://www.irs.gov). It is relatively user-friendly and has a number of videos to watch explaining a variety of tax topics, including charitable tax deductions and related requirements.

Charitable and other nonprofit and tax-exempt deductions carry a number of specific requirements that must be followed, both by the organization and the donor/taxpayer. Pay attention to the requirements regarding donation receipts from charitable organizations, and appraisal requirements for the donation of artwork, for example.

As with every year, there are a number of new tax regulations and I strongly recommend that you consult your professional tax consultant (CPA) for advice. Many non-profits are a bit lax in their receipting and reporting practices, so if you have donated money or appreciated property to a tax-exempt organization – for example, a church, university, museum, etc. – be sure to have an appropriate receipt. That receipt must state that you received nothing of value in return for your donation.

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**CERF helps craftspeople in crisis**

The Craft Emergency Relief Fund (CERF) is a nonprofit, tax-exempt organization which provides immediate support to professional craftspeople facing career-threatening emergencies such as fire, theft, illness and natural disaster.

CERF programs include interest-free loans with flexible pay-back dates, discounts on materials and equipment from craft-suppliers, and special loan funds available for craftspeople facing emergencies such as HIV/AIDS, cancer, natural disasters and heart ailments. The website also offers valuable tips on how to be ready for an emergency.

Created in 1985, CERF is the only organization of its kind in the United States. It offers professional craftspeople the resources they need to get back on their feet and back to work after career-threatening crisis.

Tax deductible donations help maintain the loan fund. For details, e-mail [info@craftemergency.org](mailto:info@craftemergency.org) or visit the website, [craftemergency.org](http://craftemergency.org).

## Tech Talk: Using the online Foundation Directory

By Mark Ratledge

In the last issue, I covered the Foundation Center's online searchable directory of grants, grantmakers and philanthropic information. The Foundation Directory Online is "big data" when it comes to the nonprofit funding world. And the idea behind an online search for grant opportunities is to carefully mine that data.

The directory indexes all of the publicly available information about each foundation in terms of what each files with the IRS or submits to the Foundation Directory itself. This includes raw financial numbers of grants given, the names of trustees, each foundation's focus in terms of geography and funding priorities, and more.

Remember, in order to be able to use the full version of the online searchable directory for free, you need to go to the public libraries in Bozeman or Kalispell, or the university libraries in Billings, Butte and Missoula. If not, you will need to subscribe online at [fconline.foundationcenter.org](http://fconline.foundationcenter.org).

When searching the Foundation Directory Online for the information you need, be as specific as you can with your search terms. Broad searches – like searching

"montana" or "capital expenditures" – will give you many results and, although shotgunning a search can be helpful in some instances, ideally you want to get more and more specific as your searches go on. Think of your search like any other web search – the more specific your keywords, the more relevant the results.

When starting a search with the Foundation Directory, you'll see lots of options. You could start with a search for the term "montana" in Grantmaker Location, and that will give you around 278 results for grantmakers in the state. That's a good way to begin to get an idea of what's available. You will see that some foundations fund many types of projects, while others are restricted to scholarships or community work.

But you may also want to search for "montana" in Geographic Focus, as that will give you results for grantmakers all across the county that list Montana as a focus of some of their grantmaking.



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Study each foundation's profile; the Limitations and Fields of Interest tabs are very important, as are Types of Support and Program Areas. If you're an individual grantseeker or working for a small organization, there's little need to go deep into the 990 tax forms.

It's best to search, make notes and keep narrowing down your search. You will get hundreds of results at first, and you want to

end up with 5-10 that are possibilities for your applications. Check each foundation's own website, too, if available, for the most recent information.

And in the end, during your application process, it's a very good idea to respect a foundation's application restrictions and not send a query letter if you're not a very good fit. Grantmakers get enough mail and email as it is, and you are respecting their wishes by being very focused and relevant in your applications for funding.